

~~Combe v. Wolff~~

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1 UNITED STATES DISTRICT COURT  
 2 FOR THE EASTERN DISTRICT OF VIRGINIA  
 ALEXANDRIA DIVISION

3 -----x  
 4 COMBE INCORPORATED, :  
 : Civil Action No.  
 : 1:17-CV-935  
 5 versus :  
 :  
 6 DR. AUGUST WOLFF GMBH :  
 & CO. KG ARZNEIMITTEL, :  
 :  
 7 : December 7, 2018  
 Defendant. : Volume III of III  
 8 -----x

9 TRANSCRIPT OF BENCH TRIAL  
 10 BEFORE THE HONORABLE T.S. ELLIS, III  
 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

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~~Tonia M. Harris OCR-USDC/EDVA 703-646-1438~~

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P R O C E E D I N G S

(Court proceedings commenced at 2:39 p.m.)

THE DEPUTY CLERK: Combe Incorporated versus Dr. August Wolff GmbH & Co KG Arzneimittel. Civil Case No. 1:17-CV-935.

THE COURT: All right. The record will reflect that the parties and counsel are present and prepared to proceed, or at least parties' counsel are present and prepared to proceed.

This is a bench trial, the evidence of which has been taken, and we are now at the point of closing argument.

And be seated, please. And I've told you that I'll give you each 30 minutes. You may choose what you want to say during the 30 minutes. Obviously, a good bit of the testimony is focussed on the fame and confusion surveys by the plaintiff's proposed -- or plaintiff's expert and the defendant's criticism, both by defendant's expert, and also by defense counsel who made criticisms of the surveys different from and in addition to those offered by the -- their expert.

So you may choose what you want to say, but there are two minor matters I want to clarify first:

I told the -- or I excluded from the evidence a demonstrative that the defendants offered that I think was a map or some kind of -- maybe it had the p-u-r or p-o-r's on it. I need to have the exhibit number for that.

1 MR. PANKO: It's 185, Your Honor.

2 THE COURT: 185. Thank you. Now, I also told the  
3 defendant that the defendant could submit an affidavit by the  
4 defense expert, which countered or would seek to counter a  
5 demonstrative or an exhibit that the plaintiff introduced  
6 through its expert in which, essentially, what the plaintiff's  
7 expert said is, well, look even if I do what you say, even if  
8 I accept what you say, there's still a number high enough to  
9 show confusion.

10 Am I correct about that?

11 MS. NAYDONOV: Yes, Your Honor.

12 THE COURT: All right. What exhibit number was  
13 that?

14 MS. NAYDONOV: We filed it this morning. I think it  
15 was -- one moment, Your Honor.

16 THE COURT: All right.

17 MS. NAYDONOV: Those were 1666, 1667, and 1668.

18 THE COURT: Now, you agree with that?

19 MR. PANKO: Yes, Your Honor.

20 THE COURT: All right. Now, I told the defendant  
21 that the defendant could file an affidavit rebutting that. I  
22 think I limited it to two pages. Let me change that. I'll  
23 limit it to three pages, because looking at that, there's  
24 enough information on there that that might be necessary.

25 If you want to exceed three pages, you can do that,

1 but file a motion and tell me why it was necessary. But don't  
2 do that unless you really, really have to. And that, of  
3 course, will be an affidavit by your experts saying why  
4 Poret -- is that his name?

5 MR. RETTEW: Yes.

6 THE COURT: Poret, Mr. Poret was wrong -- or is  
7 wrong in his response. Now, I think that's all that I left  
8 open. Am I correct or was there something else?

9 MS. NAYDONOV: Yes, Your Honor. You also allowed us  
10 to file a counter affidavit two days after their deadline.

11 THE COURT: Oh, all right.

12 MS. NAYDONOV: Remember --

13 THE COURT: Yes, I did. All right. I think that  
14 takes care of all evidentiary matters that haven't been  
15 resolved. I mean, there's a major issue that I have to  
16 resolve in the course of deciding this case, and that is the  
17 relevance of evidence from other countries, specifically  
18 Europe, where it is the defendant's position that the  
19 plaintiff, Combe, has had its mark, Vagisil, coexist without  
20 objection or confusion in England or UK and Poland and maybe  
21 that's all, I don't know.

22 And you -- the plaintiff says that's irrelevant  
23 under settled law and the defendant claims otherwise. I  
24 admitted all of the evidence relating to that, and in my  
25 decision, I will address the evidence, address its

1 significance and its admissibility.

2 Now, that takes care of everything, does it not?

3 MR. PANKO: Yes, Your Honor.

4 MS. NAYDONOV: Yes, Your Honor.

5 THE COURT: Does it eliminate the need for your  
6 closing arguments?

7 MR. RETTEW: No, Your Honor.

8 MR. PANKO: No, Your Honor.

9 THE COURT: Well, it was worth a try.

10 All right. Let's begin with the plaintiff.

11 **CLOSING STATEMENT**

12 MR. RETTEW: All right. Thank you, Your Honor, and  
13 thank you for the Court's time in this matter.

14 As I mentioned in our opening, this case is about  
15 one thing and one thing only, and that is Wolff's block letter  
16 trademark application for the made-up word "Vagisan." It's  
17 not about the prefix "Vagi." It's not be the word "vagina"  
18 for women's intimate body parts. It's about this trademark  
19 application. And because this is a 1071 case, this Court's  
20 precedence in supreme -- in *Seacret Spa* applies.

21 And this Court said in the registration context,  
22 it's not the actual uses of a mark in the marketplace, but  
23 uses listed in the application that are critical. Court went  
24 on to say, "For purposes of registration, it's the mark as  
25 shown in the application and used on the goods described in

1 the application which must be considered, not the mark as  
2 actually used."

3 Now, Wolff says that this Court and Judge Cacheris  
4 got it wrong. He did not. He relied upon the Supreme Court  
5 precedent in *B & B Hardware*, and he understood and actually  
6 cited the *Swatch* decision. And this court understood that  
7 there's a difference between an infringement claim and a pure  
8 registrability determination. And it is a very significant  
9 difference that boils down to this:

10 If a registrant gets a standard character mark  
11 without a claim to any font, style, size or color, as we have  
12 here, the registrant is entitled to depictions of the standard  
13 character mark regardless of the font, size, style or color.

14 And so what does that mean here? What it means is  
15 all that's at issue is what's shown on the left of the screen,  
16 the Vagisan trademark application. Now, if they register  
17 this, they get rights in every possible permutation and form  
18 of that mark.

19 Now, that could include the packaging shown on the  
20 right, which is their foreign packaging, but it also could  
21 include something like this, which looks awfully similar to  
22 the real Vagisil. It could include something like this, which  
23 looks very similar to that. They could get a version that  
24 looks like this, which looks very similar to the real Vagisil.

25 So what they're trying to apply for, what they're

1 trying to get is much broader than their actual foreign uses,  
2 which as we've shown or now have argued, is irrelevant. So  
3 when we look at this, under this proper lens, we apply it to  
4 the likelihood of confusion factors in the Fourth Circuit.  
5 And when we apply these facts and likelihood of confusion  
6 factors, confusion is not only likely, it is truly inevitable.

7 And so I'd like to go through the different factors  
8 that the Court is going to look at. First, we have the  
9 distinctiveness of the senior mark. Now, Combe has a number  
10 of trademark registrations for its Vagisil trademark, and that  
11 gives us the presumption of validity. It also gives us  
12 another very important presumption, and that is the patent and  
13 trademark office never required a disclaimer or secondary  
14 meaning for the Vagisil mark.

15 So, therefore, under Fourth Circuit precedence,  
16 under the *Pizzeria Uno* case, it is presumed to be suggestive  
17 and protectable and entitled to a strong scope of protection.  
18 It is also a made-up word. You heard Ms. Thevessen, you heard  
19 our witness talk about the fact that Vagisil is a made-up  
20 word. It doesn't mean anything. And Ms. Thevessen from Wolff  
21 testified that there's no competitive need to use a trademark  
22 that has Vagi at the beginning.

23 She noted and acknowledged that there are  
24 competitive products in the United States that don't use Vagi  
25 up front. And, in fact, when they were considering what to



1 name their product, they looked at ten other names that did  
2 not have Vagi in it. They had Gynoflor, they Saniflor, they  
3 had Sanolakt, and so therefore, it is an inherently  
4 distinctive mark. It is also strong in the marketplace, and  
5 we've submitted substantial evidence of marketplace strength.

6 Now, Wolff says that marketplace strength is  
7 subservient to inherent distinctiveness, to inherent strength,  
8 and we disagree. There's precedent, it's Your Honor's case,  
9 the *Renaissance Greeting Card* case where you said of the two  
10 considerations, commercial strength is more important, and you  
11 gave several examples: American Airlines, PayLess drugstores,  
12 Kentucky Fried Chicken.

13 Those are marks which were inherently weak, but  
14 became very strong through marketplace use, and so therefore,  
15 conceptual strength controls, and here we have massive  
16 evidence of conceptual strength. Vagisil started in 1973.  
17 The Vietnam war was winding down, American Graffiti and  
18 Exorcist had just hit the movie theatres, and over the next  
19 45 years, the sales have been massive. Since 1991, there's  
20 been over \$1 billion of sales of Vagisil.

21 The marketplace share that Vagisil has in numerous  
22 product categories trumps many others. And this evidence that  
23 we've submitted in this case was not before the Trademark  
24 Trial and Appeal Board. Now, the board criticized Combe for  
25 not putting its evidence of sales and recognition into a

1 marketplace context. We've done that here and it's fairly  
2 substantial.

3           There's also the advertising. Combe has spent  
4 \$350 million in advertising just from 1993, plus 75 million  
5 since 2008 on virtually every form of advertising you could  
6 have. There is television commercials in national broadcast  
7 stations. We have print publications and significant ones.  
8 TV Guide, People, Cosmopolitan, Better Homes and Gardens.

9           There's radio ads that have flooded the marketplace  
10 for Vagisil. There are other forms of advertising, online,  
11 social media, coupons, displays. And as a result of all of  
12 Combe's efforts and success, Vagisil has done what other  
13 brands hope and dream to do. It's become a part of our  
14 cultural icon, of our cultural discussion.

15           It gets attention in advertising age, New York  
16 Times, Washington Post. It even has -- it's even mentioned in  
17 very popular national TV shows, Big Bang Theory, South Park.  
18 There was a Saturday Night Live skit which was devoted just to  
19 Vagisil, and we heard from Combe's witness that in the course  
20 of that skit, it was mentioned numerous times, over and over.

21           So with all of this, we don't need to do more to  
22 prove fame, but we did --

23           THE COURT: I'm not sure I'd be proud of the fact  
24 that I was mentioned or that anything I cared about was  
25 mentioned on Saturday Night Live. Proceed.

1 MR. PANKO: Sometimes mockery is the best flattery.

2 But for a brand, Your Honor, that's recognition and  
3 that shows that it's something that is engrained in our --  
4 engrained in popular culture.

5 But with all of that, with all of that recognition,  
6 with all of that strong evidence, we did one step further and  
7 we went and did a survey. And you heard from Mr. Hal Poret  
8 who Your Honor had credited in the *Valador v. HTC* case. And  
9 he tested fame in two ways: First, unaided brand awareness  
10 and he got a whopping 38.8 percent, and this is very, very  
11 significant because people thought of this on their own. They  
12 brought this up without -- they mentioned Vagisil without  
13 being prompted in any way.

14 And Your Honor asked me during trial, how do we  
15 measure fame? How can we -- you know, what's the yardstick  
16 for fame. And my answer was: Well, we look to the case law  
17 and what other courts have said based upon similar evidence.  
18 And I think one great case is Your Honor's decision in  
19 *Ringling Brothers*. And in *Ringling Brothers*, there was  
20 41 percent recognition for The Greatest Show on Earth.

21 Now, there, the expert, Michael Rapaport, had given  
22 people a cue card and it said, The Greatest, blank, on Earth,  
23 and they were to fill in whatever they thought it was.  
24 41 percent said, "Greatest Show on Earth." Now, that is --  
25 and rightfully, that was a measure of fame. But that was a

1 measure of fame where they were prompted. They were given  
2 some words and they filled in the blank.

3 Here, we have almost that same level of fame without  
4 any prompting. People thought of Vagisil when simply asked:  
5 "Name as many vaginal care products as you can." So that's a  
6 substantial number, and even Dr. Simonson had to admit that  
7 this is an impressive number.

8 If that weren't enough, we went ahead and did an  
9 aided awareness survey, and there the number shot up to  
10 90 percent. And this is significant because this is not just  
11 women, this is men and women. This is people who use the  
12 product and people who don't use the product. So these  
13 numbers are impressive on their own right. But the fact that  
14 it's the general consuming public is even more impressive.

15 Now, for its part, Wolff did not run a survey. They  
16 could have conducted a survey. They tried this case through  
17 the end, but they did not run any surveys. So what are they  
18 left to do? They are left to criticize the survey. First,  
19 they criticize this by saying Vagizox is an unrealistic  
20 control, and there's a couple of problems with that. Wolff's  
21 very own witness admitted that Vagizox could be a plausible  
22 brand name.

23 Now, Wolff said, okay, well, she's not a survey  
24 expert. But she's even better than a survey expert because  
25 she's somebody who manages these products on a global basis.

1 She knows the market, she knows competitors, and for her to  
2 say that Vagizox is a plausible brand name shows that this is  
3 absolutely a perfect control.

4 Now, another way we know that this was a good  
5 control is by the numbers. The numbers don't lie here.  
6 Vagizox got 5.3 percent. And Mr. Poret testified that when  
7 you have a made-up unknown brand name, that that's pretty  
8 consistent with what you get to measure demand effects in this  
9 sort of survey.

10 Now, we know the demand effects didn't control the  
11 survey as Dr. Simonson says because there's a nice spread  
12 here. We've got 90 percent from Vagisil, but we also have  
13 Vagi-Gard with 18 percent and we've got SweetSpot with  
14 5 percent and Luvena with 12 percent. If there were truly  
15 demand effects here, everything would be clumped up and the  
16 numbers would be very high. But this spread shows two things.  
17 It shows that there were no demand effects that were not  
18 controlled for and that this rightfully mirrors the  
19 marketplace realities.

20 More than that, Your Honor, Wolff's own expert, four  
21 times in his testimony, agreed that Vagisil is a well-known  
22 mark. He said, I think it is well-known, however you define  
23 it. He said, I think it is well-known relative to the other  
24 brands in this category. Vagisil, he said, is well-known in  
25 this category again. When talking about another mark, he

1 said, it's not as well-known for this specific category as  
2 Vagisil.

3 So Wolff, therefore, with no survey, tries to build  
4 its case on third parties. And you will see from the  
5 declaration that was submitted, which we stipulated to, Wolff  
6 had a paralegal go out to try to find as many third-party uses  
7 as he could for the -- for a period of two months. He spent  
8 two months looking for third-party uses, and this is the best  
9 he could do.

10 Now, this is not our demonstrative, Your Honor.  
11 This is Wolff's demonstrative. But when you think of the  
12 vast universe, that is the internet, with over 5 billion  
13 web pages, the fact that this is the best they could do shows  
14 one thing: That the marketplace is not flooded with Vagi  
15 marks as they say, and we know this also from the testimony.

16 You heard from Wolff's witness, Ms. Feldman, that  
17 she did not know virtually all of these marks, and even  
18 Wolff's witness testified that before this case, before 2016,  
19 she had never heard of these marks. And that's pretty  
20 significant, because they had been looking at the U.S. market  
21 since 2011, and they said that U.S. is a very serious  
22 important market that one must prepare for very well.

23 And despite preparing very well for years, they  
24 didn't know about any of these marks until their lawyer, at  
25 the Trademark Trial and Appeal board level, went out and did

1 Google searches for it. Now, there's a reason she didn't hear  
2 about these names. They're very insignificant.

3 So let's go through some of them. You've got  
4 Vagistat, which is irrelevant because it's now owned by Combe,  
5 and was for a different type of product. Then we've got  
6 Vagicaine, which is the store brands, and those are the ones  
7 that are sold under CVS and Rite Aid and these -- and the  
8 other well-known retail brands.

9 Now, what's interested is Dr. Simonson testified  
10 that the day before his deposition, he went into a store.  
11 Now, this is Dr. Simonson, a marketing professor hired by  
12 Combe, goes to a store the day before his deposition to look  
13 at the shelves to see what he could find. And you heard him  
14 say that all he could remember on that shelf was Vagisil,  
15 Monistat, and a private label brand he can't remember.

16 And it proves the point that people think of these  
17 private label brands by CVS, Rite Aid or whatever the -- or  
18 Equate in the case of Walmart. Now, we know this also from  
19 our survey. If you look, Your Honor, you can see the -- on  
20 the unaided awareness survey, Equate was number 10 out of 25.

21 Now, what is Equate? Equate is the Walmart private  
22 label brand. Not one person said Vagicaine, not one, because  
23 they don't think of that as a stand-alone brand. So that is  
24 also irrelevant. Also, the sales of that, even though more  
25 than the other third parties, pales in comparison to Vagisil.

1           So let's look at the others that Wolff was able to  
2 find. You've got Vagi-Clear and Vagi-Soothe. Those are two  
3 products over -- the evidence that you've received by  
4 stipulation shows \$12,000 in sales for these products over  
5 several years. \$12,000 versus 1 billion for Vagisil.  
6 Vagical, \$813 over four years. VagiCare is a Canadian  
7 probiotic product that we only know of one sale, and that's by  
8 Wolff's paralegal. Vagi-Cure, four years, only \$35,000 in  
9 sale. VagiKool is an ice pack. It's an ice pack for womens'  
10 intimate area, and we heard Dr. Wolff's, Ms. Thevessen, admit  
11 that that's a noncompetitive product.

12           Now, she didn't want to admit that on the stand, but  
13 it was only when faced with her prior testimony that she had  
14 to admit that this, in fact, is not a competitive product.

15           Then we have Vagi-Sitz, which is a bath. It's  
16 actually a bathing product and we only know of one sale there,  
17 it's Wolff's paralegal. Vagi-Sal -- I'm sorry, Vagi-Pal, we  
18 only know of Wolff's one purchase. Vagifresh has had \$2,148  
19 in sales since 2015. It's irrelevant. Vagitone, in 2018, had  
20 \$346 in sales. Vagifirm is actually a tightening pill.  
21 Again, Ms. Thevessen admitted that that's a noncompetitive  
22 product, and we only know of one purchase, and that is from  
23 Wolff's paralegal.

24           Now, in addition to being insignificant, none of  
25 these marks have the elements that are at issue in this case.



1 None come as close to Vagisil as Vagisan. None have Vagi,  
2 plus "S," plus a vowel, plus a consonant. And if we were to  
3 put these in proper perspective, it would look like this, Your  
4 Honor: You'd have Vagisil sales of over a billion dollars and  
5 we've got everybody else. And that is truly significant and  
6 it shows why these third-party marks have no marketplace  
7 recognition and really should be disregarded.

8 So in the end, though, we don't have to -- we don't  
9 have to guess because we studied this. We surveyed this, we  
10 tested this empirically. In Mr. Poret's confusion survey, not  
11 one person mentioned these names, not one. And they were  
12 shown two different marks and asked if they confused that with  
13 anybody else, didn't mention one.

14 In the fame survey, less than 2 percent of the  
15 recognition were these Vagi marks. One of them is Vagistat.  
16 So we've proven empirically that these are irrelevant, and  
17 they do not excuse Wolff's infringement here, nor do they  
18 denigrate the tremendous strength of the Vagisil trademark.

19 Now, Judge, you said in the trial at one point that  
20 it makes no sense to require a company to spend money on  
21 trademark lawyers to go after every third party, and it pains  
22 me to admit that that is the reality that is. Companies  
23 should not have to spend money on trademark lawyers to go  
24 after insignificant minor uses like this. Vagisil is there  
25 for a very strong mark.

1           Then we go to the next factor, similarity of the  
2 marks, and there's a couple key concepts here: First, where  
3 goods are identical, like we have here, less similarity is  
4 required. Second, the greater the strength of a mark, less  
5 similarity is required. Third, and this is from *Seacret Spa*,  
6 this Court explained similarity should not be evaluated side  
7 by side, but by considering the marks in light of consumers'  
8 fallible memories. And fourth, the marks must be considered  
9 in their entirety and not dissect it.

10           And so when we look at it that way, Vagisil and  
11 Vagisan come very close, almost as close as you can get. It's  
12 two letters off. And if a strong mark like Vagisil, if that  
13 fame of that strong mark does not extend to something like  
14 Vagisan, it's going to be given virtually no scope of  
15 protection, and that's not what the trademark law says should  
16 happen. The trademark law says strong marks should be  
17 entitled to strong protection.

18           Now, Wolff knows, has admitted that these marks are  
19 similar, and we know this from the UK opposition. And if  
20 Your Honor lets the foreign uses in, the UK opposition was one  
21 where Wolff said that Vagisil and Vagisan are too similar.

22           THE COURT: Who said that?

23           MR. RETTEW: Wolff did when they opposed the Vagisil  
24 trademark in the UK. If that evidence comes in, you saw  
25 the -- and you saw the opposition, Your Honor, we showed the

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1 language. They said the marks are similar. Now, Wolff -- I  
2 mean, Combe has never backtracked from that. Combe agrees.  
3 In every jurisdiction, Combe has said that Vagisil and Vagisan  
4 are similar. They have not taken inconsistent positions like  
5 Wolff.

6 And they are similar.

7 The next factor, Your Honor, is the goods. The  
8 party's goods overlap and we've got the goods, again, are  
9 defined by the trademark application. And you can see what  
10 they have in the application is covered by Combe's actual use.  
11 Also, the factors of the party's facilities and advertising  
12 are presumed identical, and that is, again, from the *Seacret*  
13 *Spa* case where Judge Cacharis explained that if you have no  
14 limitations in a trademark application, it is to cover all  
15 different types of uses.

16 Purchaser care is something else that came up in  
17 this trial. It's not one of the factors that the Fourth  
18 Circuit considers independently, but it is something that Your  
19 Honor can consider in weighing the factors and the equities of  
20 this case. And the parties agree on something, that intimate  
21 health is an embarrassing topic, and I've put Ms. Thevessen's  
22 testimony on this. And she also agreed and admitted that  
23 women want to purchase these products, products like Vagisan,  
24 quickly, without being seen.

25 And so why is that relevant? It's relevant because

—Tonia M. Harris OCR-USDC/EDVA 703-646-1438—

1 people are not going to sit there at the shelves and spend a  
2 lot of time deliberating. They're going to grab the product  
3 and they're going to go, and that means they're going to be  
4 more apt to be confused, especially products like these that  
5 are not high priced products.

6 And so while it does treat a medical issue, it is  
7 still something that people will grab quickly and are very  
8 easily to be confused, especially since these products are  
9 promoted by word of mouth, which Ms. Thevessen from Wolff  
10 admitted.

11 Next issue is intent. And we talked about that a  
12 little bit at trial. This is a factor that this Court has  
13 explained in the registrability context should not be afforded  
14 significant weight. So we're not arguing that there was bad  
15 faith here, but it really, really doesn't matter, nor does it  
16 require that we have actual confusion. Not required, but we  
17 went ahead and we did a survey, and we used the very  
18 conservative Eveready methodology.

19 So people were shown Vagisan and the only way they  
20 were confused is if they thought of Vagisil on their own.  
21 They had to come up with that on their own. And so it's very  
22 significant that they got 37 percent of people were confused.  
23 Then we ran a control using Vagipur, and that was used  
24 carefully to determine how many people confused the marks  
25 irrespective of the shared use of Vagi. And it got a result

1 of 18 percent, that is 19 percent confusion, which is more  
2 than the amounts that are required in the Fourth Circuit. The  
3 *Sara Lee* case said it was sufficient to have 10 to 12 percent.

4 So Wolff, without its own survey, is left to attack  
5 Combe's survey and those attacks fall flat. The first thing,  
6 they say we should have used an actual product and that  
7 ignores the issue at hand. As I talked about earlier, under  
8 *Seacret Spa*, that would be improper. And in *Seacret Spa*, the  
9 Court said -- the Court actually criticized an expert for, I  
10 quote, "his reliance on marketplace usage."

11 Now, it wasn't a survey in that case. It was an  
12 expert report talking about what's happening in the  
13 marketplace. So it was not a survey. But what is important  
14 is: The Court said an expert shouldn't rely upon actual  
15 marketplace use in a 1071 proceeding like this. And that's  
16 why it would be entirely inappropriate to have used packaging.

17 Now, it also would be inappropriate to have used  
18 packaging in a survey because you've got designs there, you've  
19 got Dr. Wolff. So what you would be testing is matters  
20 extraneous to the trademark application, and that's why it  
21 would be irrelevant, and that's why this design that we did  
22 was perfectly the right one to do.

23 Now, Wolff, like it does with the foreign trademark  
24 issue, engages in some double speak here. Before Your Honor,  
25 at this very podium, at the motion to dismiss stage, Wolff

1 told you it is impossible to do a survey in this case because  
2 they don't have products here. They said that in the motion  
3 to dismiss.

4 Now they say, well, you -- yes, you could have done  
5 a survey and you should have used foreign packaging that is  
6 not sold by Wolff in the United States.

7 Well, if that were the case, they should have done a  
8 survey. They should have, but they didn't. And they had an  
9 expert who has done many, many, many surveys, but he didn't do  
10 one.

11 So he criticizes the survey. He says Vagipur is too  
12 foreign sounding. There's no valid evidence of this. Not a  
13 single person in that survey said that. There were 200 people  
14 in the control group who were given 600 opportunities through  
15 open-ended questions to say that Vagipur is a foreign mark.  
16 Not one did. And Dr. Simonson's suggestion that Vagistan  
17 would be appropriate is absurd, with all due respect, because  
18 Pakistan is a pretty well-known place. So that just destroys  
19 his theory right there and then.

20 Also, this is not a valid criticism because the  
21 Patent and Trademark Office, when they were looking at the  
22 Vagisan mark, they thought it was a foreign mark. They  
23 thought it was a foreign word. They said to Wolff, you need  
24 to tell us the significance of this mark, and you also have to  
25 tell us if it's a foreign word that can be translated.

1           So the Patent and Trademark Office thought this was  
2   a foreign word. Under that, on that basis alone, the fact  
3   that Vagipur could be considered a foreign sounding mark,  
4   which I don't think it is, is certainly enough to show that  
5   this was a proper control.

6           Now, Wolff also says that Vagipur is not close  
7   enough to Vagisan. Well, any closer, it would be infringing.  
8   And if you have an infringing control, that's not testing  
9   noise. That's not pulling out noise. It's just adding to the  
10  confusion, as Mr. Poret explained.

11          Now, the irony here, Your Honor, is Mr. Poret could  
12  have gotten away with using a very different control. He  
13  could have used one of the marks that Wolff was considering  
14  when it was picking Vagisan. It could have used FloriSan, it  
15  could have used Sanolakt or any of these other Vagi marks.  
16  But he didn't. He used a Vagi formative mark to pull out  
17  confusion and to test whether or not Vagi was causing the  
18  confusion here.

19          If he used one of these other controls, his numbers  
20  would have been perhaps double than what he had -- or not  
21  double, but it would have been significantly higher. But we  
22  do know that Vagipur was a good control because it got 18  
23  percent noise. And as Mr. Poret explained, when you get 18  
24  percent noise in a survey, it's doing something. That control  
25  is doing its job.

1           Now, to leave no stone unturned, once again, what we  
2       did was we recalculated the numbers based upon the way that  
3       Wolff says they should be recalculated. And when we  
4       recalculated them by looking at the answers people gave, Mr.  
5       Poret got numbers of 23.5 percent and 21.5 percent.

6           So no matter how you slice it, with his control or  
7       with this alternate counting method, he got very similar  
8       results. It shows that this is a scientifically valid study  
9       that did ferret out -- that got rid of noise and measured  
10      confusion accurately.

11          So to sum up, Your Honor, these are the factors.  
12      These are the likelihood of confusion factors that have to be  
13      considered. And when we look at it, we've got  
14      distinctiveness. Well, Vagisil is inherently distinctive, and  
15      in the marketplace, which as Your Honor noted is most  
16      important, it's incredibly strong. One of the strongest marks  
17      in its category with 90 percent brand recognition.

18          The marks are similar. They have the same number of  
19      letters. They start with Vagi, plus "S," plus a vowel, plus a  
20      consonant. They look alike and they sound alike, Vagisil and  
21      Vagisan. Very easy to confuse these, especially when we look  
22      at the fact that this is a trademark application that covers  
23      every permutation and variation of that mark, which as we  
24      showed in the earlier slides, comes way too close to Vagisil.

25          Similarity to goods or services, they're identical.



1 The facilities employed by the parties, also identical,  
2 because there's no limitation in their trademark application,  
3 and that's from *Seacret Spa*. Similarity of the advertising,  
4 presumed identical under *Seacret Spa*. Their intent, well, we  
5 don't have anything on intent, but the Court has said -- this  
6 Court has said it is rarely relevant.

7 Actual confusion, well, there's no evidence from  
8 consumers because they haven't come into the market yet. And  
9 as Ms. Thevessen admitted, there can't be any confusion when  
10 they're not here. But we do have a robust survey that does  
11 show significant confusion measured several different ways.

12 So based on all of this evidence, Your Honor, the  
13 TTAB's decision simply cannot stand. Thank you.

14 THE COURT: Mr. Panko.

15 **CLOSING STATEMENT**

16 MR. PANKO: Your Honor, the evidence establishes  
17 that the TTAB's decision was correct, and that there is no  
18 likelihood of confusion between the trademarks Vagisan and  
19 Vagisil. Now, the reason that there is no likelihood of  
20 confusion, Your Honor, is because when the evidence as applied  
21 to the Fourth Circuit's likelihood of confusion factors, it  
22 weighs overwhelmingly in Dr. Wolff's favor.

23 At least five of the confusion factors weigh heavily  
24 in Wolff's favor: The conceptual weakness of the trademark  
25 Vagisan -- of the trademark Vagisil, the dissimilarity of the

1 parties' marks, the high degree of consumer care used to buy  
2 these products, Wolff's good faith and the lack of actual  
3 confusion, including the lack of any valid survey evidence.

4 First, Your Honor, with regard to conceptual  
5 weakness, the evidence shows that when Combe adopted the  
6 trademark Vagisil back in 1973, the prefix Vagi was already  
7 registered by a multitude of companies in connection with  
8 vaginal care products. Registered marks at that time already  
9 included Vagisec, Vagilac and many others.

10 So the Vagi prefix was already weak and dilute for  
11 products of this nature at the time that Combe adopted it.  
12 Combe then ensued to compound that problem in the years that  
13 followed by acquiescing in the widespread third-party use and  
14 registration of marks that contained the Vagi prefix in  
15 connection with vaginal care products.

16 Now, Combe argues today that its acquiescence in  
17 those third-party marks shouldn't matter, but that argument is  
18 wrong as a matter of law. As a matter of law, what you have  
19 when you have a multitude of marks with a similar element like  
20 this is what's known as a crowded field. And what that means  
21 is that consumerists have become conditioned between --  
22 conditioned to distinguishing between these marks by looking  
23 not at the descriptive prefix, but at the suffix. They know  
24 to look at the suffix of the mark in order to distinguish  
25 them.

1           Now, Your Honor, on your screen will be displayed an  
2 image illustrating the crowded field of Vagi prefix marks.

3           THE COURT: Where have I seen this before? Go  
4 ahead.

5           MR. PANKO: And as you can see, Your Honor, the  
6 crowded field includes marks like Vagi-Soothe, Vagi-Clear,  
7 Vagifirm, Vagitone and many others. And for over 30 years,  
8 the crowded field also included the mark "Vagistat," a highly  
9 successful product that was sold by Novartis and Pfizer in the  
10 same stores as Vagisil, including Rite Aid.

11           Now, in addition, prominent among these third-party  
12 marks, is the mark Vagicaine, which has, likewise, been sold  
13 by major retailers, Rite Aid, CVS, Target, and Walmart for  
14 many years. And not only have the Vagicaine products been  
15 sold, but they've sold -- been sold right next to Vagisil on  
16 store shelves.

17           So, again, Your Honor, the effect of these  
18 third-party uses is to show that consumers understand that  
19 when they're looking for vaginal care products, they need to  
20 look at the suffix of the marks, rather than the prefix to  
21 distinguish them. And because of that, Your Honor, because of  
22 this crowded field, there's no reason why Vagisan can't  
23 coexist with Vagisil just like Vagi-Soothe, Vagistat,  
24 Vagi-Sitz, Vagicaine and all these others have coexisted with  
25 it.

1           Now, Your Honor, over the years, courts have  
2 repeatedly considered descriptive prefix cases just like this  
3 one, and courts have repeatedly ruled exactly how we're asking  
4 the Court to rule, and the way the TTAB ruled. And one  
5 example of that, Your Honor, was the *Water Pik versus*  
6 *Med-Systems* case from the Tenth Circuit.

7           And that case involved, just like this one, a  
8 descriptive prefix. There, the descriptive prefix was "sinu"  
9 for sinus-related products, and the marks there were  
10 SinuCleanse and SinuSense. And the Court ruled that there was  
11 no likelihood of confusion because --

12           THE COURT: Say that again, please, sir.

13           MR. PANKO: It was SinuSense and SinuCleanse. So  
14 both had the descriptive prefix "sinu" to denote sinus-related  
15 products. The Court said there was no likelihood of  
16 confusion, because the prefix "sinu" was weak and descriptive  
17 for sinus-related products as demonstrated by the existence of  
18 third-party uses and registrations of various marks containing  
19 the sinu prefix.

20           A similar case was the *Wooster Brush v. Prager Brush*  
21 case from the TTAB. The marks there were Poly-Flo and  
22 PolyPro. The descriptive prefix there was "poly," which  
23 denoted paint brushes made of polyester. Again, the TTAB  
24 there said the descriptive prefix "poly" was weak and  
25 descriptive for products of that type as shown by third-party

1 uses and registration.

2 Many other cases have reached the same conclusion.  
3 Alltel, it's an Alabama district court case, said that the  
4 suffix "tel" was in widespread use for telecommunications  
5 services, and therefore, Alltel and Aktel could coexist.

6 The same reasoning of all those cases applies with  
7 equal force here, Your Honor. These third-party marks in  
8 evidence show that the mark Vagisil is conceptually extremely  
9 weak and that other Vagi prefix marks can and do coexist with  
10 it.

11 Combe now argues that the commercial strength of its  
12 Vagisil mark overcomes all of these third-party uses and  
13 registrations. But, Your Honor, that argument is wrong. And  
14 the argument is wrong because there are two aspects of the  
15 inquiry that looks -- that examines the strength of a  
16 plaintiff's mark.

17 One inquiry is the commercial strength of the mark.  
18 The other inquiry is the conceptual strength of the mark. And  
19 when you have a mark like Vagisil that's conceptually weak and  
20 has become as diluted by third-party uses as that one has,  
21 commercial success alone can't overcome that. And a good case  
22 illustrating this point, Your Honor, is the *CareFirst* case  
23 from the Fourth Circuit.

24 In that case, the plaintiff's mark was "CareFirst,"  
25 which was part of the Blue Cross Blue Shield brand. And

1 there, just like here, the plaintiff introduced evidence of  
2 millions of dollars in sales in advertising figures in an  
3 effort to demonstrate the commercial success of its mark. The  
4 Court said that's not enough to show strength or fame of the  
5 mark in light of widespread third-party use and registration  
6 of the words "care" and "first" in the healthcare field.

7 And the CareFirst court also emphasized, in reaching  
8 its decision, that, quote, "A strong mark is one that is  
9 rarely used by others." Again, that same reasoning applies  
10 here. The mark Vagisil can't be considered strong or famous  
11 given the widespread use of the prefix Vagi by others.

12 Now, Combe tries to discredit the widespread  
13 third-party use and registration evidence, but all of its  
14 arguments should be rejected.

15 First, Your Honor, the private label Vagicare  
16 products are just as relevant as all of the other Vagi prefix  
17 marks. Just like all those marks, the presence of these  
18 products, particularly in nationwide chains, shows the  
19 descriptive nature of the Vagi prefix and shows that consumers  
20 have been exposed to Vagi prefix marks over the years.

21 Second, the fact that some of the third-party Vagi  
22 prefix marks haven't achieved high sales is irrelevant. And  
23 this is what the federal circuit said in the *Juice Generation*  
24 case where the TTAB in that proceeding originally ruled  
25 exactly as Combe is arguing. The TTAB originally said, "When

1 you're looking at third-party use, you need to consider sales  
2 figures and advertising figures, otherwise, you don't consider  
3 those."

4           The Federal Circuit said that's wrong. When you  
5 have a volume of third-party uses and registrations that's  
6 significant, the fact that some of them don't have significant  
7 sales yet doesn't matter. It's the cumulative effect of all  
8 of those third-party marks and registrations over the years  
9 that matters. And so that's what *Juice Generation* said and  
10 that's the reasoning that should apply here.

11           And the number is significant here. There are at  
12 least currently 17 third-party uses of Vagi prefix marks and  
13 16 registrations of Vagi prefix marks. Over the years, there  
14 have been many others. The stipulated evidence includes at  
15 least 22 examples of registrations that have since expired,  
16 but existed prior to Combe's adoption, and some later, for  
17 Vagi prefix marks.

18           Now, the second factor that the Fourth Circuit  
19 considers, the similarity of the marks also weighs heavily in  
20 Dr. Wolff's favor. What the Fourth Circuit looks at are  
21 sight, sound and meaning. All three of those aspects favor  
22 Wolff.

23           In sight, "san" is not similar to "sil." The record  
24 also shows that numerous Vagi followed by "S" marks have  
25 coexisted with Vagisil, Vagistat and Vagi-Soothe. So there's

1 no reason why Vagisan can't also coexist with Vagisil.

2 In sound, san and sil sound nothing alike as the  
3 TTAB correctly found. And in meaning, san refers -- is the  
4 Latin term for health, as Ms. Thevessen testified, which has a  
5 much different connotation than sil.

6 Now, in conducting a comparison of the marks, the  
7 similarity of the marks, in the Fourth Circuit, Courts  
8 followed the Pizzeria Uno factors, which examine the  
9 marketplace use of the respective marks. So the Court should  
10 consider the Dr. Wolff packaging that's available in the U.S.  
11 on Amazon.com.

12 But even if the Court doesn't do that and follows  
13 the approach used by the TTAB, the outcome is the same. If  
14 the Court takes the approach espoused by TTAB, the Court will  
15 look at the standard character application for Vagisan and  
16 will presume that the mark could be displayed in the same  
17 stylization as Vagisil.

18 That doesn't change the outcome because -- many  
19 third parties are, in fact, using the same or very similar  
20 stylization as Vagisil. Now, Vagi-Soothe, Vagicaine, many  
21 other products use a similar sans serif font. There's nothing  
22 particularly distinctive about the Vagisil font and many third  
23 parties are using it. So even if the Court uses that  
24 analysis, the outcome is the same.

25 Third, the factor examining the degree of purchaser



1 care used to buy these products also weighs heavily in Wolff's  
2 favor because the record shows that vaginal care products like  
3 these are purchased with a great deal of care.

4 Now, the evidence shows that both parties have used  
5 doctors as part of their marketing to promote their products,  
6 and both parties go to great length to provide guidance on the  
7 proper use of their products, including on their websites and  
8 through other channels.

9 Now, for this appeal, Combe has invented a new  
10 theory that these products are so-called grab-and-go products  
11 that are not purchased with care.

12 Combe's new theory directly contradicts the evidence  
13 in this case, including Combe's own admission at trial in the  
14 TTAB proceeding. During that trial, Combe's own witness,  
15 Yolanda Payne, admitted that these products are, in fact,  
16 purchased with care and this is what she said:

17 "Question: Would you agree with me, Ms. Payne, that  
18 women are careful in treating their own health, in  
19 particular, intimate parts of their body?

20 "Answer: For the most part, most women, yes.

21 "Question: So would you agree with me that women  
22 would, as an extension of that, be careful in the  
23 selection of what products they would use to treat a  
24 health issue, particularly one that is related to  
25 intimate part of their body?

1 "Answer: Yes."

2 So, Your Honor, the confusion factor examining the  
3 degree of purchaser care also weighs heavily in Wolff's favor.

4 Next, Your Honor, the factors considering good faith  
5 and lack of actual confusion clearly favor Wolff. Wolff filed  
6 this application in good faith to expand a developed brand, as  
7 Ms. Thevessen testified. It is a brand that's been used for  
8 20 years. And as explained by Ms. Thevessen, Wolff has no  
9 desire whatsoever to trade on any good will that Combe may  
10 have in the Vagisil mark.

11 In addition, the lack of actual confusion factor  
12 favors Wolff because there is no such evidence in this case,  
13 despite Vagisan being available in the United States on  
14 Amazon.com since at least 2016, which is what the TTAB records  
15 shows.

16 Now, Your Honor, Combe points to how Poret's survey is  
17 to try to overcome the weaknesses in its case, but the Poret  
18 surveys don't help Combe because they're defective and  
19 entitled to no weight.

20 The first major flaw in both of Mr. Poret's surveys is  
21 that they both used an improper control that artificially  
22 inflated the response rates to favor Combe. As explained by  
23 Dr. Simonson, the purpose of a control in a survey is to count  
24 for and subtract from the survey rate, error or noise. And to  
25 be valid, a control has to meet two tests.

1 First, it has to be plausible; and second, it has to  
2 share as many characteristics as possible with the defendant's  
3 mark except for the characteristic whose influence is being  
4 tested. So the characteristic whose influence is being tested  
5 in this case is the suffix, "san." Mr. Poret's controls  
6 failed both of these tests.

7 First, the control from the fame survey, Vagizox,  
8 isn't plausible because it's completely different than Vagisan  
9 or any other mark on the market, most of which have a suffix  
10 with a positive connotation, like soothe or tone or clear.  
11 Zox has a negative connotation referring to toxin or  
12 oxidation, which is undesirable for a vaginal care product.  
13 The control Vagipur fails for similar reasons. It's not close  
14 enough to Vagisan. What Mr. Poret should have done is used a  
15 suffix that removes the "S" from the suffix, but keeps the  
16 a-n. This would have been consistent with survey science and  
17 the case law because it would have been close enough to the  
18 mark being tested, Vagisan, but would have removed a portion  
19 from it, the "S."

20 Now, Your Honor, in the -- Mr. Poret has had surveys  
21 given no weight for similar problems with controls. One  
22 example of this is the *Ducks Unlimited* case from the western  
23 district of Tennessee. And there, the Court gave no weight to  
24 Mr. Poret's confusion survey because of a control issue. Just  
25 like here, the control that Mr. Poret used in that case wasn't

1 similar enough to the defendant's mark. The two marks  
2 involved there were duck head logos, but the duck head control  
3 that Mr. Poret chose was not similar enough to the defendant's  
4 actual duck logo, and thus, the Court gave the survey no  
5 weight.

6 The same flaw exist here and for that same reason, Mr.  
7 Poret's confusion survey here should be given no weight.

8 The second major defect in Mr. Poret's confusion  
9 survey is his overcounting of responses to the why question in  
10 the matter that skewed the results in Combe's favor. And  
11 courts emphasized that the answers to the why question in a  
12 confusion survey are critical. You only count answers to the  
13 why question as indicative of confusion if they clearly show  
14 confusion.

15 And this Court has recognized that principal in the  
16 case *Teaching Company Partnership v. Unapix Entertainment*  
17 which is a Judge Lee decision from the year 2000. And in that  
18 case, the court, in reviewing a survey, said, quote, "Often an  
19 examination of the respondent's verbatim responses to the why  
20 question are the most illuminating and probative part of a  
21 survey, for they provide a window into consumer thought  
22 processes in a way that mere statistical data cannot."  
23 The Court went on to say that the experts' recalculation of  
24 the responses in that case was defective because it gave equal  
25 weight to reasons which clearly demonstrated actionable

1 confusion with responses that have nothing to do with  
2 anything. For example, both parties using a cut-out coupon in  
3 an ad or an 800-number.

4 Here, Mr. Poret, likewise, improperly included many  
5 responses in his calculation that were not indicative of  
6 confusion, and this greatly and inaccurately inflated the net  
7 confusion rate in Combe's favor. So answers that Mr. Poret  
8 improperly included, in response to the why question, were  
9 things like: Just sounds right, the V-a-g-i in Vagisan, both  
10 start with Vagi. Those answers and many others simply don't  
11 reflect confusion, and thus, they shouldn't have been counted.  
12 Now, if Mr. Poret had correctly removed those responses from  
13 his survey tally, this would have reduced the net confusion  
14 rate to 10 or 11 percent, Your Honor, which is not probative  
15 of confusion.

16 The third major defect in Mr. Poret's confusion survey  
17 was his failure to use a proper test stimulus, which should  
18 have been the actual marketplace package of Vagisan, which is  
19 available on Amazon.com. It's true that in the TTAB case,  
20 using an index card stimulus has, in some cases, been deemed  
21 appropriate. But that's not proper, Your Honor, once you  
22 appeal to district court and the court is considering actual  
23 marketplace use under the Pizzeria Uno factors.

24 Now, one example of this, Your Honor, was the  
25 *Victoria's Secret* case from the southern district of New York,

1 which was a 1071(b) case only. There was not infringement  
2 claim there, and there, the Court considered a survey that was  
3 done by an expert, Jerry Ford, which did look at a marketplace  
4 stimulus.

5 And the *Seacret Spa* case, which Combe relies on is  
6 distinguishable. There was no survey in that case,  
7 Your Honor. The expert there did consider marketplace use,  
8 which the Court said should be given no weight, but there was  
9 no survey there.

10 So, Your Honor, the result of all three of these flaws  
11 is that Mr. Poret's confusion survey is unreliable and should  
12 be given no weight. But, Your Honor, even if the Court does  
13 decide to give Mr. Poret's confusion survey some weight, this  
14 still isn't enough to tip the scales in Combe's favor, because  
15 even under the best possible scenario for Combe, the net  
16 confusion rate is still only 19 percent. And courts have said  
17 that any net confusion rate under 20 percent, courts regularly  
18 give such a rate -- little weight in the likelihood of  
19 confusion analysis.

20 And, for example, the *Bruce Lee* case from the southern  
21 district of New York said figures below 20 percent become  
22 problematic. If you have a figure below 20 percent, the  
23 survey evidence just becomes part of the overall mix. And  
24 here, it can't outweigh the balance of the likelihood of  
25 confusion in Wolff's favor.

1           And, Your Honor, if the correct percentages applied,  
2   11 -- which should be 10 or 11 percent, that's clearly not  
3   enough to show confusion and is not probative of confusion.  
4   And, for example, the *Georgia-Pacific* case, cited in our  
5   conclusions of law, said that an 11.4 percent figure was too  
6   low to be given any weight.

7           So in conclusion, Your Honor, because the likelihood  
8   of confusion factors here weigh overwhelmingly in Dr. Wolff's  
9   favor, we respectfully request that the TTAB's decision be  
10  affirmed. Thank you.

11           THE COURT: All right. I actually don't affirm a  
12  decision. I actually render a decision and it either agrees  
13  with it or not. I don't really affirm it, because it's de  
14  novo as you both agree.

15           Thank you. Illuminating arguments. I was glad to  
16  see that you both focussed on Pizzeria Uno factors. You've  
17  ticked them off one at the time, gave me your views on each  
18  one. Your divergence on foreign evidence was clear, and I'll  
19  have to wrestle with that issue, as was your divergence on  
20  whether in a survey in a 1071 case without infringement,  
21  whether you should use the trade dress that you know about or  
22  just what's on the registration. That's another issue, which  
23  I will have to deal with.

24           But all in all, your findings of fact and  
25  conclusions of law are pretty consistent with what you've said

1 here today. I think you mentioned some more authority today  
2 than you had in your conclusions of law.

3 And in any event, it's been helpful. Thank you for  
4 your arguments. I hope you feel as though you have been fully  
5 heard. I think you have. And I will now have to undertake  
6 the task of deciding whether or not the plaintiff has carried  
7 its burden of showing that the mark shouldn't be -- should be  
8 canceled in effect, because that's your remedy; am I right?

9 MR. PANKO: That's right, Your Honor.

10 THE COURT: Thank you for your argument. I'll take  
11 the matter under advisement and decide it.

12 What about all of this? We're not going to keep  
13 this. I know what's been admitted. I think what I will do is  
14 we will be careful to look at what has been admitted. At some  
15 point in the not distant future, you'll receive a call from  
16 the Clerk's office saying -- asking you to come and carry away  
17 your exhibits. We won't need -- we will, of course, keep  
18 exhibits that were admitted and -- because they will be part  
19 of the permanent court record.

20 All right. You adhered to your timing pretty  
21 closely for which I thank you. Court stands in recess.

22  
23 **(Proceedings adjourned at 3:35 p.m.)**  
24  
25



CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had and testimony adduced upon the Bench Trial in the case of the **COMBE INCORPORATED versus DR. AUGUST WOLFF GMBH & CO. KG ARZNEIMITTEL**, Civil Action No. 1:17-CV-935, in said court on the 7th day of December, 2018.

I further certify that the foregoing 41 pages constitute the official transcript of said proceedings, as taken from my machine shorthand notes, my computer realtime display, together with the backup tape recording of said proceedings to the best of my ability.

In witness whereof, I have hereto subscribed my name, this December 11, 2018.



Tonia M. Harris, RPR  
Official Court Reporter